

Senate Daily Reader

Tuesday, February 15, 2000

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State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

870D0098

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1010** - 2/9/00

Introduced by: The Committee on Local Government at the request of the Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise certain procedures for the formation and
2 adjustment of boundaries of certain special districts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 6-16-2 be amended to read as follows:

5 6-16-2. The application for organization shall be a petition verified by one or more
6 circulators by affidavit stating that each affiant personally witnessed the signatures on the petition
7 and believe the signatures to be genuine. The petition shall be signed by at least twenty-five
8 percent of the ~~landowners within the proposed district who are also~~ registered voters within the
9 proposed district. If the proposed district is in two or more counties, a petition shall be filed in
10 each county and each petition shall be signed by at least ~~twenty~~ twenty-five percent of the
11 ~~landowners within the proposed district who are also~~ registered voters within the proposed
12 district in that county. The petition shall be accompanied by a deposit covering the estimated
13 costs as determined by the county auditor of the public notices and the conduct of the election
14 for the formation of the district. If the district to be formed is a road district that contains no
15 registered voters, the petition ~~requirements are based solely on~~ shall be signed by at least twenty-
16 five percent of the landowners.

Section 2. That § 6-16-4 be amended to read as follows:

6-16-4. The county auditor shall publish the notice of the voter registration deadline at least once each week for two consecutive weeks, the last publication to be not less than twenty-five nor more than thirty days prior to the election. The auditor shall publish notices of election at least once each week for two consecutive weeks, the last publication to be not less than four nor more than ten days before the election in at least one legal newspaper of general circulation in the proposed district.

Section 3. That § 6-16-6 be amended to read as follows:

6-16-6. ~~A~~ Any person who ~~is a landowner in the proposed district and~~ is registered to vote and resides in the proposed district may vote in the elections provided for in § 6-16-5. However, the qualifications of a voter for irrigation district elections are provided in chapter 46A-4. Absentee voting is allowed pursuant to chapter 12-19 for the election on the question of formation of the special district or any other question to be voted on by the eligible voters of the district. If the district to be formed is a road district that contains no registered voters, voter eligibility is based solely on landowners. For the purpose of this section, a person resides in a proposed district if the person actually lives in the proposed district for at least thirty days in the last year.

Section 4. That § 31-12A-1.1 be amended to read as follows:

31-12A-1.1. Notwithstanding any other provision of chapter 31-12A, ~~one, two, or three~~ an area with three or fewer landowners may ~~form~~ be formed into a road district pursuant to this chapter. ~~If there are three or less landowners, each~~ Each landowner shall be a trustee at large and no election of trustees is required. After the district is incorporated and the number of landowners within the district is five or more, the district shall conduct an election pursuant to § 31-12A-16. The district shall conduct the election on the ~~next~~ first Tuesday after the anniversary date of the formation of the district.

Section 5. That § 34-11A-28 be amended to read as follows:

34-11A-28. The boundaries of any ambulance district organized under the provisions of this chapter may be changed in the manner prescribed by §§ 34-11A-4 to ~~34-11A-10~~ 34-11A-8, inclusive, ~~but. However, the changes change~~ of boundaries of ~~any such a~~ district ~~may~~ does not impair or affect ~~its~~ the district's organization or ~~its~~ right in or to property; nor ~~may it~~ does the change of boundaries impair, affect, or discharge any contract, obligation, lien, or change for or upon which it ~~might~~ the district may be liable had ~~such~~ the change of boundaries not been made.

Section 6. That § 34A-5-18 be amended to read as follows:

34A-5-18. The board of trustees shall give notice pursuant to § 6-16-4 of the election provided for in § 34A-5-17 ~~pursuant to § 34A-5-8, and the~~. The question shall be submitted to the voters on a separate ballot and ~~be so stated as to~~ shall enable each voter to vote for or against the proposed question.

Section 7. That § 46A-14-8 be amended to read as follows:

46A-14-8. The initiating petition shall contain the following:

- (1) The name of the proposed district;
- (2) That there is need in the interest of the public health, safety, and welfare for creation of a district to accomplish improvements in the watershed;
- (3) A statement in general terms setting forth the purposes of the contemplated improvements, the territory to be included in the district, and all proposed subdivisions thereof, if any, of the district;
- (4) The number ~~and names~~ of managers, ~~which~~ shall be three or five members, ~~to be appointed as first managers of the proposed district, and who shall act for a period of one year or until the first annual meeting. They~~. Each manger shall be owners of own land located in the proposed district ~~but none shall~~ and be a registered voter in the proposed district. However, no manager may be a public officer of the state or federal

1 government;

2 (5) A list of landowners and the total acreage of land owned by each within the proposed
3 district;

4 (6) A map of the proposed district and the ownership of all land in the proposed district,
5 except the outline only of the jurisdiction of the authorized officials of municipalities
6 included need be shown; and

7 (7) The location of the official place of business of the proposed district;

8 ~~(8) A request for the organization of the district as proposed and appointment of the first~~
9 ~~managers.~~

10 Section 8. That § 46A-18-4 be amended to read as follows:

11 46A-18-4. The petition established pursuant to § 46A-18-2 shall contain:

12 (1) The name of the proposed district;

13 (2) The object and purpose of the water project and works proposed to be constructed
14 or acquired, together with a general description of the nature, location, and method
15 of operation of the proposed works or program of activities;

16 (3) A legal description of the lands constituting the proposed district and the ~~names~~ name
17 of any ~~municipalities~~ municipality included partly or wholly within the boundaries of
18 the proposed district;

19 (4) The location of the principal place of business of the proposed district; and

20 (5) The number of members of the board of directors of the proposed district, which
21 number may not be ~~less~~ fewer than three nor more than seven, and a statement as to
22 whether the directors ~~shall~~ are to be elected at large or ~~shall~~ are to be elected by
23 director divisions; ~~the names and addresses of the members who shall serve as~~
24 ~~directors until their successors are elected and qualified as provided in this chapter,~~
25 ~~and, if director divisions are provided for, the respective divisions that the directors~~

1 ~~are to represent. The persons named in the petition as directors. Each director~~ shall
2 be a qualified voters voter of the district and, if director divisions are provided for,
3 shall be a qualified voters voter of the respective ~~divisions the directors are~~ division
4 the director is to represent.

5 Section 9. That § 46A-18-21 be amended to read as follows:

6 46A-18-21. The initial district directors ~~named in the petition for formation, upon~~
7 ~~establishment of the district by the Board of Water and Natural Resources,~~ shall assume the
8 duties of ~~their offices~~ office and serve until ~~their~~ successors are duly elected and qualified.

9 Section 10. That § 6-16-7 be amended to read as follows:

10 6-16-7. If there is a conflict regarding who has a right to vote in the election pursuant to
11 §§ 6-16-4 to 6-16-6, the judges of election shall settle the conflict by referring to the official
12 records of the ~~register of deeds and~~ county auditor in each county where these official records
13 are held.

1 **BILL HISTORY**

- 2 1/11/00 First read in House and referred to Local Government. H.J. 13
- 3 1/17/00 Scheduled for Committee hearing on this date.
- 4 1/18/00 Scheduled for Committee hearing on this date.
- 5 1/18/00 Deferred by Chair.
- 6 1/20/00 Scheduled for Committee hearing on this date.
- 7 1/25/00 Scheduled for Committee hearing on this date.
- 8 1/27/00 Scheduled for Committee hearing on this date.
- 9 2/1/00 Scheduled for Committee hearing on this date.
- 10 2/3/00 Scheduled for Committee hearing on this date.
- 11 2/8/00 Scheduled for Committee hearing on this date.
- 12 2/8/00 Local Government Do Pass Amended, Passed, AYES 11, NAYS 0. H.J. 501

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

400D0332

HOUSE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1029** - 1/14/00

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulation of
2 simulcast racing operations.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 42-7-57 be amended to read as follows:

5 42-7-57. No person ~~shall~~ may hold any racing meeting or collect or disburse any money
6 under the certificate system without having first obtained and having in full force and effect a
7 license issued by the commission. Any person who violates the provisions of this section ~~shall~~
8 ~~be is~~ guilty of a Class 1 misdemeanor.

9 Section 2. That § 42-7-58.1 be amended to read as follows:

10 42-7-58.1. The commission may allow licensees approved by the commission to collect and
11 disburse money under the certificate system at locations other than where licensed races are
12 conducted if the satellite locations are more than fifty miles away from any pari-mutuel horse
13 track or dog track licensed by the commission which is conducting a race meet at that time or
14 if the pari-mutuel horse or dog track agrees to the operation of such a location within the fifty
15 mile radius. ~~The licensees shall combine the amount contributed at the satellite location with the~~
16 ~~contribution contributed at the track and such amount shall be combined with the amount~~

1 ~~withheld by the licensees as provided in §§ 42-7-79 and 42-7-79.1. The state~~ special racing fund
2 shall receive one and one-half percent of the total amount contributed from the satellite location,
3 and the special racing revolving fund in the Office of the State Treasurer and the South Dakota-
4 bred racing fund shall each receive one and one-half percent of the total amount contributed,
5 with the remaining amount of the contribution withheld at the satellite location to be retained by
6 the licensees. No other deductions may be made from the amount withheld by the licensee at the
7 satellite location. Satellite facilities may receive contributions between the hours of 9:00 a.m. and
8 1:00 a.m.

9 Section 3. That § 42-7-59 be amended to read as follows:

10 42-7-59. The application for a license to hold or conduct a racing meeting or to provide a
11 simulcast signal to a satellite facility shall be signed under oath and filed with the commission on
12 or before a day prescribed in this chapter. The application shall state:

13 (1) The full name and address of the applicant. If the applicant for a license is a
14 corporation, the names of all officers, directors, or stockholders of the corporation
15 or any of its holding corporations shall be disclosed individually to the commission.

16 The commission may require disclosure of any person or group of persons holding
17 directly, indirectly, or beneficially an interest of any nature whatsoever in the
18 corporation or any of its holding corporations, whether financial, administrative,
19 policy-making, or supervising;

20 (2) The location of its racetrack or other ~~facility~~ facilities and whether ~~it is the racetrack~~
21 or other facilities are owned or leased. If leased, state the names and addresses of the
22 lessors;

23 (3) A statement of the assets and liabilities of such applicant;

24 (4) A description of the qualifications and experience of the applicant, if an individual, or
25 of its officers and directors, if a corporation, in the conduct of racing establishments

1 in the five years preceding the filing of such application;

2 (5) The time, place, and number of days such racing meet is proposed to be conducted
3 or such satellite facilities are proposed to be in operation;

4 (6) The type of racing to be conducted or simulcast;

5 (7) Such other information as the commission may require.

6 Any expenses incurred by the commission in regard to the investigation of an applicant shall
7 be paid by the applicant.

8 Section 4. That § 42-7-60 be amended to read as follows:

9 42-7-60. Every person applying for a license under ~~the certificate system~~ §§ 42-7-58 and 42-
10 7-58.1 shall give bond payable to the State of South Dakota with good security to be approved
11 by the commission. The bond shall be the amount which the commission determines ~~will~~
12 ~~adequately~~ is adequate to protect the amount normally due and owing to the ~~state~~ commission
13 in a ~~regular payment~~ sixty-day period or, in the case of new or altered conditions, based on the
14 projected revenues.

15 The commission may waive the bond ~~and in.~~ In such event, the amount of taxes and fees due
16 and owing the state shall be a lien on the license to operate. The lack of timely payment shall be
17 cause for revocation or suspension of the license to operate.

18 Section 5. That § 42-7-63 be amended to read as follows:

19 42-7-63. The commission may charge a fee for ~~licenses to conduct racing of horses or dogs~~
20 licensees to collect and disburse money under the certificate system commensurate with the ~~size~~
21 ~~and attendance of such race meet~~ amount of money which is collected daily, but no charge less
22 than ten dollars nor in excess of one hundred dollars per day shall be made. The license fees shall
23 be remitted to the state treasurer and placed in the special racing fund.

24 Section 6. That § 42-7-69 be repealed.

25 ~~42-7-69. The commission may grant one additional day of racing during the race meeting~~

~~period granted to any track, upon application and agreement by any track in which one specific day of any meet shall be set aside, and all profit and all taxes payable to the state or any state agency for such day's operation, less actual operating costs, from such specific day's operations of such track, shall be paid into the state treasury for a scholarship trust fund. Actual operating costs of any track conducting such additional day of racing shall not include constant day to day expenses which would have been incurred had the day of racing not been held. Nondeductible expenses include, but are not limited to, such items as capital expenditures, interest on debts, real estate taxes, annual license fees, donations, bad debts, and such other items of daily or prorated expense as the commission may by rule prescribe.~~

Section 7. That § 42-7-70 be repealed.

~~42-7-70. The fund described in § 42-7-69 shall be administered by the state board of regents upon such terms and conditions as the board may from time to time prescribe. Moneys in the fund shall be used for scholarships for students who attend state institutions of higher learning supported by the state.~~

Section 8. That § 42-7-81 be amended to read as follows:

42-7-81. Before any payment is made to a person who has contributed to a pari-mutuel pool, the licensee shall deduct the odd cents by which the amount payable to such person exceeds a multiple of ten cents, which shall be known as "breakage." ~~Each~~ The licensee conducting the live race meet or providing the simulcast signal to the location where the money is collected shall retain all breakage.

Section 9. That § 42-7-82 be amended to read as follows:

42-7-82. Claims for any part of a redistribution from a pari-mutuel pool shall be made within sixty days from the end of the meet at which the race was held or be forever barred. Any sums so barred shall become the property of the licensee conducting the meet or providing the simulcast signal to the satellite facility at which the contribution was made.

1 **BILL HISTORY**

2 1/11/00 First read in House and referred to State Affairs. H.J. 17

3 1/14/00 Scheduled for Committee hearing on this date.

4 1/14/00 State Affairs Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 42

State of South Dakota

SEVENTY-FIFTH SESSION LEGISLATIVE ASSEMBLY, 2000

925D0305

HOUSE ENGROSSED NO. **HB1064** - 1/27/00

Introduced by: Representatives Hennies, Brooks, Brown (Richard), Duniphan, Fitzgerald, Lintz, McCoy, McIntyre, Munson (Donald), and Wilson and Senators Ham, Albers, Brosz, Lawler, Madden, Reedy, Shoener, Staggers, and Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the procurement,
2 collection, filing, and analysis of biological specimens from persons convicted of crimes of
3 violence.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 23-5-14 be amended to read as follows:

6 23-5-14. The attorney general shall procure and file for record genetic marker grouping
7 analysis information from any person convicted of a ~~violation of the provisions of chapter 22-22.~~
8 ~~The attorney general also shall procure and file for record such genetic marker grouping analysis~~
9 ~~information of any person confined in any workhouse, jail, reformatory, penitentiary or other~~
10 ~~penal institution or otherwise under supervision for a violation of the provisions of chapter 22-22~~
11 sex crime pursuant to chapter 22-22 or a crime of violence as defined in § 22-1-2. The attorney
12 general also shall cooperate with and assist corrections officers, sheriffs, chiefs of police, and
13 other law enforcement officers to the end that a complete state system of genetic marker
14 grouping analysis information may be established. ~~Sheriffs, chiefs of police, and any other law~~
15 ~~enforcement officers of the state~~ The Department of Corrections, immediately upon the
16 ~~conviction~~ attaining custody of any person for a ~~violation of the provisions of chapter 22-22~~

1 conviction of a crime of violence as defined in § 22-1-2 or a conviction of a sex crime pursuant
2 to chapter 22-22, shall arrange for collection of ~~blood and saliva~~ biological specimens for genetic
3 marker grouping analysis according to the system established by the Division of Criminal
4 Investigation and, ~~upon the person's conviction,~~ shall forward any such specimen to the division
5 for classification and filing. ~~If the court does not sentence a person convicted of a sex crime~~
6 pursuant to chapter 22-22 or a person convicted of a crime of violence as defined in § 22-1-2 to
7 the Department of Corrections, the court shall order the convicted person to immediately report
8 to a law enforcement agency for the collection of a biological specimen for genetic grouping
9 analysis.

10 Section 2. That § 23-5-16 be amended to read as follows:

11 23-5-16. The Division of Criminal Investigation shall provide equipment and instructions as
12 necessary for collection of ~~blood and saliva~~ biological specimens pursuant to this chapter. Such
13 collection of specimens shall be performed in a medically approved manner. Only a physician,
14 laboratory technician, registered nurse, physician's assistant, phlebotomist, expanded role
15 licensed practical nurse, certified nurse practitioner, medical technician, or medical technologist
16 may withdraw blood ~~or saliva~~ for the purpose of genetic marker grouping analysis. Other
17 persons, such as corrections officers or law enforcement officers, after being trained, may
18 withdraw an alternative biological specimen in accordance with a procedure provided by the
19 Division of Criminal Investigation. The Office of the Attorney General shall promulgate rules,
20 pursuant to chapter 1-26, to identify the types of biological specimens which, based on
21 evidentiary value, may be procured and the procedures by which the biological specimens may
22 be procured. Any such authorized person, acting on the presumption of consent, or any hospital
23 employing such person, is not liable and may not be held to pay damages to the party from whom
24 the ~~blood or saliva~~ biological sample is withdrawn, if the withdrawal is administered with usual
25 and ordinary care. Any such specimen shall be forwarded to the Division of Criminal

- 1 Investigation for analysis and categorization into genetic marker groupings. Such genetic marker
- 2 groupings shall be maintained by the Division of Criminal Investigation. The division may
- 3 contract with private entities for such specimen analysis and categorization.

1 **BILL HISTORY**

2 1/14/00 First read in House and referred to Judiciary. H.J. 47

3 1/19/00 Scheduled for Committee hearing on this date.

4 1/21/00 Scheduled for Committee hearing on this date.

5 1/21/00 Judiciary Do Pass Amended, Passed, AYES 11, NAYS 2. H.J. 188

6 1/26/00 Motion to Amend, Passed. H.J. 248

7 1/26/00 House of Representatives Do Pass Amended, Passed, AYES 65, NAYS 3. H.J. 248

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

925D0304

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB1068** - 1/20/00

Introduced by: Representatives Hennies, Brooks, Brown (Richard), Duniphan, Fitzgerald, Lintz, McCoy, and McIntyre and Senators Albers, Ham, Lawler, Reedy, Shoener, Staggers, and Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the disposition of
2 property seized by law enforcement agencies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-37-10 be amended to read as follows:

5 23A-37-10. ~~Where~~ If there is no claimant or ~~where~~ if the right to possession of seized
6 property cannot be determined after a reasonable period of time, ~~the circuit court judge having~~
7 ~~custody of such property must, after the payment of preservation and delivery expenses by the~~
8 ~~county commissioners, deliver such property to the commissioners who shall transport such~~
9 ~~property to a state where its possession is lawful and shall sell the property. The proceeds, after~~
10 ~~deducting the expenses of the sale, shall be paid into the county treasury pursuant to § 16-2-28~~
11 the law enforcement agency collecting such property, through an order of the court, may:

12 (1) Transfer ownership of the property to any governmental agency having a legitimate
13 need for such property; or

14 (2) Sell the property and deliver the proceeds of the sale to the appropriate finance officer
15 of the city, county, or state employing such law enforcement agency.

1 **BILL HISTORY**

2 1/14/00 First read in House and referred to Judiciary. H.J. 47

3 1/19/00 Scheduled for Committee hearing on this date.

4 1/19/00 Judiciary Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 154

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

555D0501

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB1073** - 2/9/00

Introduced by: Representatives Young, Apa, and Chicoine and Senators Dunn (Jim) and Olson

1 FOR AN ACT ENTITLED, An Act to permit assessments based on benefits.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 9-45-32 be amended to read as follows:

4 9-45-32. In lieu of the method of apportionment prescribed in §§ 9-45-30 and 9-45-31, it
5 may be provided in and by the resolution determining the necessity of any street improvement
6 that the cost ~~thereof~~ shall be assessed against ~~all assessable lots and tracts~~ each lot and tract of
7 ~~land fronting or abutting thereon or lying within one-half block or three hundred feet thereof,~~
8 ~~whichever is less,~~ according to the benefits determined by the governing body to accrue to each
9 ~~of such lots and tracts~~ lot and tract from the construction of the improvement. ~~In such event the~~
10 The governing body, in preparing, considering, and hearing objections to the assessment roll as
11 provided in chapter 9-43, shall make such an investigation as may be necessary and shall find and
12 determine the amount in which each such lot and tract will be especially is specifically benefited
13 by the construction of the improvement, and shall assess against each such lot and tract such the
14 amount, not exceeding said the benefit as shall be necessary to pay its just portion of the total
15 cost of the work to be assessed. No payment may be made by the state on any assessment against
16 state property except in accordance with § 5-14-19.

1 **BILL HISTORY**

2 1/15/00 First read in House and referred to State Affairs. H.J. 54

3 2/9/00 Scheduled for Committee hearing on this date.

4 2/9/00 State Affairs Do Pass Amended, Passed, AYES 13, NAYS 0.

State of South Dakota

SEVENTY-FIFTH SESSION LEGISLATIVE ASSEMBLY, 2000

382D0339

HOUSE ENGROSSED NO. **HB1092** - 2/1/00

Introduced by: Representatives Konold, Brown (Jarvis), Crisp, Diedtrich (Elmer), Pummel, Smidt, and Wetz and Senators Madden and Brosz

1 FOR AN ACT ENTITLED, An Act to provide for the regulation of home inspectors.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Client," any person who engages, or seeks to engage, the services of a home
5 inspector for the purpose of obtaining inspection of and written report upon the
6 condition of a residential building;

7 (2) "Commission," the South Dakota Real Estate Commission;

8 (3) "Home inspector," any person registered or licensed as a home inspector pursuant to
9 the provisions of this Act;

10 (4) "Home inspection," an inspection and written evaluation of all the following
11 components of a residential building: heating system, cooling system, plumbing
12 system, electrical system, structural components, foundation, roof, masonry structure,
13 and exterior and interior components;

14 (5) "Residential building," a structure consisting of not more than four family dwelling
15 units.

16 Section 2. The commission shall issue and renew certificates to licensed and registered home

1 inspectors pursuant to the provisions of this Act.

2 Section 3. No person may provide, or hold oneself out as able to provide, a home inspection
3 for compensation unless registered or licensed in accordance with the provisions of this Act. A
4 violation of this section is a Class 1 misdemeanor.

5 Section 4. An applicant for a license as a home inspector shall file a written application
6 provided by the commission showing that the applicant meets the following requirements:

- 7 (1) Good moral character;
- 8 (2) Successful completion of high school or high school equivalency;
- 9 (3) Employment as a registered home inspector for no less than one year and performance
10 of not less than one hundred home inspections for compensation; and
- 11 (4) Successful completion of a licensing examination approved by the commission.

12 Section 5. An applicant for registration as a home inspector shall file a written application
13 provided by the commission showing that the applicant meets the following requirements:

- 14 (1) Good moral character;
- 15 (2) Successful completion of high school or high school equivalency;
- 16 (3) Successful completion of an approved course of study of not less than forty hours, as
17 prescribed by the commission in rules promulgated pursuant to chapter 1-26; and
- 18 (4) Successful completion of a registration examination approved by the commission.

19 Section 6. The commission shall promulgate rules pursuant to chapter 1-26 for licensed and
20 registered home inspectors in the following areas:

- 21 (1) Standards and requirements for prelicense and continuing education, including
22 qualifications of instructors, procedures for granting a certificate of accreditation,
23 notification of a material change in an approved course offering, suspension,
24 revocation, and denial of course approval, certification of attendance, preregistration,
25 and hours required to renew a license or registration;

- 1 (2) A code of ethics and standards of practice;
- 2 (3) Fees for applications, examinations, registration, licensure, and renewals, not to
- 3 exceed two hundred dollars for application and one hundred dollars for renewal;
- 4 (4) Procedures and qualifications for application, minimum requirements for examination,
- 5 procedures for the examination and the administration of the examination, the
- 6 required score for passing the examination, and procedures for replacement of a
- 7 license;
- 8 (5) Procedures for disciplinary proceedings, including requirements for filing a complaint,
- 9 dismissal of a complaint, informal and formal resolution of a complaint, formal
- 10 complaint and answer requirements, final action and review, disqualification of a
- 11 commission member from a hearing, and authorization for per diem and mileage; and
- 12 (6) Procedures for declaratory rulings, petitions for rules, and contested cases.

13 Section 7. The provisions of this Act do not apply to any of the following persons:

- 14 (1) Any person who is employed as a code enforcement official by the state or a political
- 15 subdivision of the state when acting within the scope of that governmental
- 16 employment;
- 17 (2) Any person regulated by the state as an architect, professional engineer, electrical
- 18 contractor, or plumber, who is acting within the scope of practice of the person's
- 19 profession or occupation;
- 20 (3) Any real estate broker or salesperson licensed by the state when acting within the
- 21 scope of that person's license;
- 22 (4) Any real estate appraiser certified, licensed, or registered by the state when acting
- 23 within the scope of that person's license;
- 24 (5) Any person engaged as an insurance adjuster, when acting within the scope of that
- 25 person's profession; or

1 (6) Any manufactured home dealer who is licensed by the state, when acting within the
2 scope of that person's license.

3 Section 8. Upon payment to the commission of a fee and the submission of a written
4 application provided by the commission, the commission may issue a home inspector license to
5 any person who holds a valid license issued by another state or possession of the United States
6 or the District of Columbia which has standards substantially equivalent to those of this state,
7 as determined by the commission.

8 Section 9. During the first three hundred sixty-five days after the effective date of this Act,
9 the commission shall issue to any person, upon application, a home inspector license, if the
10 applicant meets the requirements of subdivisions (1), (2), and (4) of section 4 of this Act and has
11 been engaged in the practice of home inspections for compensation for not less than one year
12 prior to the effective date of this Act and has performed not less than one hundred home
13 inspections for compensation.

14 Section 10. Any license or registration expires on December thirty-first of the year following
15 issuance and may be renewed biennially. An application for renewal shall be filed with the
16 commission no later than November thirtieth of the year of expiration. Any renewal application
17 filed after that date is subject to a late renewal penalty of twenty dollars per month or fraction
18 thereof. However, no late renewal may be filed after June thirtieth of the year following the
19 expiration of the registration or license.

20 Section 11. The commission may suspend, revoke, reprimand, or assess a monetary penalty
21 not to exceed two thousand five hundred dollars, or may provide for a combination or
22 revocation, suspension, reprimand, or monetary penalty, for any violation of this Act or any
23 administrative rule adopted to administer this Act.

24 Section 12. All fees and any fines imposed by the commission shall be paid to the fund of the
25 commission.

1 Section 13. The commission may refuse to grant or may suspend or revoke a home inspector
2 license or registration upon proof, to the satisfaction of the commission, that the holder has:

3 (1) Disclosed any information concerning the results of the home inspection without the
4 approval of a client or the client's representative;

5 (2) Accepted compensation from more than one interested party for the same service
6 without the written consent of all interested parties;

7 (3) Accepted commissions or allowances, directly or indirectly, from other parties dealing
8 with the holder's client in connection with work for which the holder is responsible;
9 or

10 (4) Failed to disclose promptly to a client information about any business interest of the
11 holder which may affect the client in connection with the home inspection.

12 Section 14. This Act is effective on January 1, 2001.

1 **BILL HISTORY**

2 1/15/00 First read in House and referred to Commerce. H.J. 58

3 1/20/00 Scheduled for Committee hearing on this date.

4 1/25/00 Scheduled for Committee hearing on this date.

5 1/25/00 Commerce Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 221

6 1/27/00 House of Representatives Deferred to another day.

7 1/28/00 House of Representatives Deferred to another day. H.J. 288

8 1/31/00 Motion to Amend, Passed. H.J. 312

9 1/31/00 House of Representatives Do Pass Amended, Passed, AYES 51, NAYS 17. H.J. 312

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

606D0131

SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **HB1096** - 2/11/00

Introduced by: Representatives Wetz, Apa, Brown (Richard), Diedrich (Larry), Duenwald, Earley, Eccarius, Hunt, Jaspers, Konold, Koskan, Lintz, McNenny, Napoli, Pummel, Sutton (Duane), and Young and Senators Madden, Brown (Arnold), Drake, Dunn (Jim), Everist, Kleven, and Vitter

1 FOR AN ACT ENTITLED, An Act to assign liability for certain attempts to prevent or delay
2 the control or eradication of weeds or the mountain pine beetle.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. If any person or entity takes legal action in any form to prevent or delay any
5 federal, state, or local government agency or any person from attempting to control or eradicate
6 an infestation of weeds, as defined by state law, or an infestation of the mountain pine beetle on
7 any public land, including federal land for which a state or local government agency has applied
8 for permission to attempt to control or eradicate such an infestation, and if the infestation
9 subsequently spreads to adjacent private land, the person or entity that brought such legal action
10 is liable to the owner of the private land for damages resulting from the infestation.

1 **BILL HISTORY**

2 1/15/00 First read in House and referred to committee assignment waived. H.J. 59

3 1/18/00 Referred to Agriculture and Natural Resources. H.J. 120

4 1/25/00 Scheduled for Committee hearing on this date.

5 1/25/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 13, NAYS 0.

6 H.J. 220

7 1/27/00 House of Representatives Deferred to another day. H.J. 273

8 1/31/00 House of Representatives Do Pass Amended, Passed, AYES 61, NAYS 6. H.J. 311

9 2/1/00 First read in Senate and referred to Agriculture and Natural Resources. S.J. 275

10 2/8/00 Scheduled for Committee hearing on this date.

11 2/10/00 Scheduled for Committee hearing on this date.

12 2/10/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 6, NAYS 2.

13 S.J. 406

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

463D0549

SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB1101** - 2/14/00

Introduced by: Representatives Michels, Apa, Chicoine, Duniphan, Engbrecht, Hennies, Koehn, McCoy, Napoli, Sutton (Duane), and Wilson and Senators Olson, Everist, Hutmacher, Munson (David), Reedy, Shoener, and Staggars

1 FOR AN ACT ENTITLED, An Act to revise the grounds for revocation or suspension of an
2 alcoholic beverage license and to provide for the revocation of driving privileges upon a
3 conviction for unlawful sales or purchases of alcoholic beverages involving persons under
4 the age of twenty-one.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That chapter 35-2 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 No retail license may be revoked or suspended because of a violation of any statute,
9 ordinance, rule, or regulation prohibiting the sale or service of any alcoholic beverage to a person
10 under the age of twenty-one years if the violation was committed by an employee or agent of the
11 licensee and:

- 12 (1) The licensee did not see the violation occur;
- 13 (2) The employee or agent has been certified by a nationally recognized training program
14 approved by the Department of Revenue that provides instruction on techniques to
15 prevent persons under the age of twenty-one years from purchasing or consuming

1 alcoholic beverages;

2 (3) The licensee has a written policy requiring the licensee's employees or agents to
3 examine the driver's license or other age-bearing identification document of any
4 person who appears to be under the age of twenty-one years before selling or serving
5 any alcoholic beverage to that person, and the employee or agent has agreed in
6 writing to abide by the policy;

7 (4) The employee or agent has not been convicted of a similar violation within the past
8 twelve months; and

9 (5) The licensee has not had any prior violation of any statute, ordinance, rule, or
10 regulation prohibiting the sale or service of an alcoholic beverage to a person under
11 the age of twenty-one years on the premise where the violation occurred in the
12 previous twelve months.

13 Section 2. That chapter 35-9 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 If the conviction for a violation of § 35-9-1, 35-9-1.1, or 35-9-2 is for a first offense, the
16 court shall, in addition to any other penalty allowed by law, order the revocation of the
17 defendant's driving privileges for a period not less than thirty days and not to exceed one year.
18 However, the court may issue an order permitting the person to operate a motor vehicle for
19 purposes of the person's employment or attendance at school or to court-ordered counseling
20 programs during the hours of the day and the days of the week set forth in the order. The court
21 may also restrict the privilege in such manner as it sees fit for a period not to exceed one year.

22 If the conviction for a violation of § 35-9-1, 35-9-1.1, or 35-9-2 is for a second or
23 subsequent offense, the court shall, in addition to any other penalty allowed by law, order the
24 revocation of the defendant's driving privileges for a period not less than sixty days and not to
25 exceed one year.

1 **BILL HISTORY**

2 1/15/00 First read in House and referred to committee assignment waived. H.J. 60

3 1/18/00 Referred to State Affairs. H.J. 120

4 1/21/00 Scheduled for Committee hearing on this date.

5 1/24/00 Scheduled for Committee hearing on this date.

6 1/24/00 State Affairs Do Pass Amended, Passed, AYES 11, NAYS 2. H.J. 191

7 1/26/00 House of Representatives Do Pass Amended, Passed, AYES 62, NAYS 6. H.J. 255

8 1/27/00 First read in Senate and referred to State Affairs. S.J. 231

9 2/9/00 Scheduled for Committee hearing on this date.

10 2/9/00 Deferred by Chair.

11 2/11/00 Scheduled for Committee hearing on this date.

12 2/11/00 State Affairs Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 446

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

750D0056

HOUSE ENGROSSED NO. **HB1108** - 2/2/00

Introduced by: Representatives Crisp, Diedrich (Larry), Duniphan, and Koetzle and Senators
Vitter and Dunn (Rebecca)

1 FOR AN ACT ENTITLED, An Act to revise certain planning and zoning provisions.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 11-2-1 be amended to read as follows:

4 11-2-1. ~~The words or terms as Terms used in this chapter unless a different meaning is clearly~~
5 ~~indicated by the context shall mean:~~

6 (1) "Board," the board of county commissioners;

7 (2) "Commission," "planning and zoning commission," "zoning commission," or "planning
8 commission," any county planning and zoning commission created under the terms of
9 this chapter;

10 (3) "Comprehensive plan," a document which describes in words, and may illustrate by
11 maps, plats, charts, and other descriptive matter, the ~~policy~~, goals, policies, and
12 objectives of the board to interrelate all functional and natural systems and activities
13 relating to the development of the territory under its jurisdiction;

14 (4) "Governing body," the board of county commissioners, the city council or city
15 commission;

16 (5) "Municipality," a city or town however organized;

- 1 (6) ~~"Official controls," any ordinance, regulation, standard, map, or procedure adopted~~
2 ~~by the board to regulate the development of the territory so as to carry out the~~
3 ~~comprehensive plan~~ "Temporary zoning or subdivision ordinance," an ordinance
4 adopted as an emergency measure for a limited duration;
- 5 (7) "Subdivision ordinance," ~~the~~ any ordinance adopted by the board to regulate the
6 subdivision of land so as to provide coordination of streets with other subdivisions
7 and the major street plan, adequate areas set aside for public uses, water and
8 sanitation facilities, drainage and flood control, and conformity with the
9 comprehensive plan;
- 10 (8) ~~"Unit of local government," a municipality, township, school district or other special~~
11 ~~district~~ "Subdivision," the division of any tract or parcel of land into two or more lots,
12 sites, or other division for the purpose, whether immediate or future, of sale or
13 building development. The term includes resubdivision. This definition does not apply
14 to the conveyance of a portion of any previously platted tract, parcel, lot, or site if the
15 conveyance does not cause the tract, parcel, lot, or site from which the portion is
16 severed to be in violation of any existing zoning ordinance or subdivision ordinance
17 applying to the tract, parcel, lot, or site;
- 18 (9) "Zoning map," the map ~~adopted by resolution of the board~~ that delineates the extent
19 of each district or zone established in the zoning ~~resolution~~ ordinance;
- 20 (10) "Zoning ordinance," ~~the~~ any ordinance adopted by the board to ~~regulate by districts~~
21 ~~or zones the location, height, bulk, and size of buildings and other structures, and~~
22 ~~accessory uses, percentage of lot which may be occupied, the size of lots, courts, and~~
23 ~~other open spaces, the density and distribution of population, the location and use of~~
24 ~~buildings, and structures for trade, advertising uses, industry, residence, recreation,~~
25 ~~public activities, or other purposes, and, the uses of land for trade, industry,~~

1 ~~recreation, or other purposes~~ implement the comprehensive plan by regulating the
2 location and use of buildings and uses of land.

3 Section 2. That § 11-2-10 be amended to read as follows:

4 11-2-10. If a county is conducting or in good faith intends to conduct studies within a
5 reasonable time, or has held or is holding a hearing for the purpose of considering a
6 comprehensive plan ~~or official controls~~, the board in order to protect the public health, safety,
7 and general welfare may adopt as an emergency ~~measure~~ measures a temporary zoning ordinance
8 and map ~~and temporary zoning ordinance~~ and ~~other a temporary official controls~~ subdivision
9 ordinance, the ~~purpose~~ purposes of which ~~shall be~~ are to classify and regulate uses and related
10 matters as constitutes the emergency. Before adoption or renewal of ~~such~~ the emergency
11 measure or measures, the board shall hold at least one public hearing . Notice of the time and
12 place of the hearing shall be given once at least ten days in advance by publication in a legal
13 newspaper of the county. Any emergency measure is limited to one year from the date it becomes
14 effective and may be renewed for one year. In no case may such a measure be in effect for more
15 than two years.

16 Section 3. That § 11-2-11 be amended to read as follows:

17 11-2-11. The county planning commission may prepare, or cause to be prepared, a
18 comprehensive plan for the county including those municipalities within the county which are
19 either unincorporated or which have requested by resolution of the governing board of such
20 municipality to be included. ~~Zoning ordinances, subdivision ordinances, the official zoning map,~~
21 ~~and other official controls as deemed necessary, shall be included as adjuncts to and in~~
22 ~~accordance with the comprehensive plan. The county planning commission shall hold a public~~
23 ~~hearing subject to the same notice requirements as provided in § 11-2-19.~~

24 Section 4. That § 11-2-13 be amended to read as follows:

25 11-2-13. ~~Official controls may include the establishment of zoning districts within which the~~

~~use of land for agriculture, forestry, recreation, residence, industry and commerce, soil conservation, water supply, sanitation and additional uses of land may be encouraged, regulated or prohibited and for such purposes the board may divide the county into districts of such number, shape and area as may be deemed best suited to carry out the comprehensive plan. For the purpose of promoting health, safety, or the general welfare of the county the board may adopt a zoning ordinance to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes.~~

Section 5. That § 11-2-14 be amended to read as follows:

~~11-2-14. For each zoning district zoning ordinances, or regulations may be adopted designating or limiting the location, height, bulk, number of stories, size of, and the specific uses for which dwellings, buildings and structures may thereafter be erected or altered; the minimum and maximum size of yards, or other open spaces; sanitary, safety and protective measures that shall be required for such dwellings, buildings and structures; the area required to provide for off-street loading and parking facilities; flood plain areas; and to avoid too great concentration or scattering of the population. All such provisions shall be uniform for each class of land or building throughout each district, but the provisions in one district may differ from those in other districts. For any of the purposes specified in § 11-2-13, the board may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within the districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.~~

The regulations shall be made in accordance with a comprehensive plan and designed to

lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks; and other public requirements.

The regulations shall be made with reasonable consideration, among other things, to the character of the district, and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county.

Section 6. That § 11-2-15 be amended to read as follows:

~~11-2-15. Official controls~~ The regulations may include maps for highways, roadways, parkways, roads, and streets showing the exact alignments, gradients, dimensions, and other pertinent features, and including specific controls for setbacks from the right-of-way against encroachment by buildings or other physical structures or facilities.

Section 7. That § 11-2-16 be amended to read as follows:

~~11-2-16. Official controls~~ The regulations may include maps for other public facilities such as parks, playgrounds, schools, and other public buildings showing exact location, size, boundaries, and other related features including appropriate regulations protecting such future sites against encroachment by buildings and other physical structures or facilities.

Section 8. That § 11-2-17 be amended to read as follows:

~~11-2-17. Official controls may include specific regulations and controls pertaining to other elements incorporated in~~ The board may adopt a subdivision ordinance which shall be made in accordance with the comprehensive plan or establishing. The regulations may establish standards and procedures to be employed in land development including, ~~but not limited to,~~ subdividing of land and the approval of land plats and the preservation of streets and land for other public purposes requiring future dedication or acquisition and general design of physical improvements.

Section 9. That § 11-2-17.1 be amended to read as follows:

11-2-17.1. The board of county commissioners may enact permanent subdivision ordinances as defined in subdivision 11-2-1(7). The board need not follow the procedures provided in this chapter for establishing zoning districts or official controls pursuant to the comprehensive plan in implementing this section. This section does not apply to any county that has adopted a comprehensive plan. Before adoption of its subdivision ordinance or any amendment thereto, the commission shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county. Any interested person shall be given a full, fair, and complete opportunity to be heard at the hearing, and the governing body may refuse or adopt the ordinance, with or without amendment.

Section 10. That § 11-2-18 be amended to read as follows:

11-2-18. ~~Official controls are not limited to the features set forth in §§ 11-2-13 to 11-2-17, inclusive.~~ The planning commission shall hold at least one public hearing on the respective comprehensive plan, zoning ordinance, or subdivision ordinance. Notice of the time and place of the hearings shall be given once at least ten days in advance by publication in a legal newspaper of the county. Following the public hearing, the planning commission shall submit its recommendation to the board.

Section 11. That § 11-2-19 be amended to read as follows:

11-2-19. After receiving the ~~proposed comprehensive plan drafted by the planning commission, which includes proposed official controls,~~ recommendation of the planning commission the board shall hold at least one public hearing on the respective comprehensive plan, zoning ordinance, or subdivision ordinance. Notice of the time and place of the ~~hearing~~ hearings shall be given once at least ten days in advance by publication in a legal newspaper of the county.

Section 12. That § 11-2-20 be amended to read as follows:

1 11-2-20. Based on the results of the hearing or hearings, the action upon the comprehensive
2 plan ~~or any part, adjunct, amendment or additions~~, shall be by resolution ~~or ordinance~~, as
3 ~~appropriate~~, carried by the affirmative votes of not less than a majority of all the members of the
4 board of county commissioners.

5 Based on the results of the hearing or hearings, the action upon the zoning regulations and
6 the subdivision regulations shall be by ordinance carried by the affirmative votes of not less than
7 a majority of all the members of the board.

8 Section 13. That § 11-2-21 be amended to read as follows:

9 11-2-21. The action of the board of county commissioners on the plan shall be filed with the
10 county auditor. A summary notice of fact of the adoption shall be ~~prepared by the county~~
11 ~~planning commission, reviewed by the state's attorney, and~~ published once in a legal newspaper
12 of the county and take effect on the twentieth day after its publication unless the referendum is
13 invoked. Any summary notice of fact of adoption published under the provisions of this chapter
14 shall contain a notification that the public may inspect the entire comprehensive plan ~~or any part,~~
15 ~~adjunct, amendment, or additions~~ at the office of the county auditor during regular business
16 hours.

17 If such a zoning or subdivision ordinance is adopted, the ordinance is subject to the
18 provisions of § 7-18A-5 as a comprehensive regulation unless the referendum is invoked.

19 Section 14. That § 11-2-22 be amended to read as follows:

20 11-2-22. The county comprehensive plan ~~or any adjunct thereto~~, zoning ordinance, and
21 subdivision ordinance may be referred to a vote of the qualified voters of the county pursuant
22 to §§ 7-18A-15 to 7-18A-24, inclusive. The effective date of a county the comprehensive plan
23 ~~or adjunct thereto, zoning ordinance, or subdivision ordinance~~ on which a referendum is to be
24 held shall be suspended by the filing of a referendum petition until the referendum process is
25 completed. However, ~~when~~ if a comprehensive plan ~~or adjunct thereto~~, zoning ordinance, or

1 subdivision ordinance is referred to a referendum vote, no land uses that are inconsistent with
2 the ~~county comprehensive plan or adjunct thereto~~ plan or ordinance may be established between
3 the time of adoption of the ~~plan~~ resolution or ordinance by the ~~county commission board~~, as
4 provided in § 11-2-20, and the time of the referendum vote.

5 Section 15. That § 11-2-22.1 be amended to read as follows:

6 11-2-22.1. If the voters ~~shall~~ reject the proposed comprehensive plan or adjunct thereto,
7 zoning ordinance, or subdivision ordinance, the board of ~~county commissioners~~ may cause the
8 planning commission to revise the plan or ~~parts thereof or adjunct thereto~~ regulations and adopt
9 the same as revised, and file and publish the same as required by § 11-2-21.

10 Section 16. That § 11-2-23 be repealed.

11 ~~11-2-23. Upon adoption of any ordinance or other official control including any maps or~~
12 ~~charts the county auditor shall file a certified copy thereof with the county register of deeds.~~

13 Section 17. That § 11-2-24 be amended to read as follows:

14 11-2-24. If a board of ~~county commissioners~~ has adopted the comprehensive plan or any part
15 thereof, no street, road, park, or other public way, ground, place, space, public building or
16 structure, public utility, whether publicly or privately owned, if covered by the comprehensive
17 plan or any adopted part thereof or adjunct thereto, may be constructed or authorized in the
18 county or within its subdivision jurisdiction, until the location and extent thereof has been
19 submitted to and approved by the planning commission. In case of disapproval, the commission
20 shall communicate its reasons to the board. By majority vote of the board members elect, a board
21 may overrule the disapproval.

22 Section 18. That § 11-2-25.1 be repealed.

23 ~~11-2-25.1. The board of county commissioners may appoint the planning and zoning~~
24 ~~commission to serve as a board of adjustment. The board of adjustment may, in specific cases~~
25 ~~to avoid unwarranted hardship which constitutes an unreasonable deprivation of use as~~

1 ~~distinguished from the mere grant of a privilege, make upon an affirmative vote of two-thirds of~~
2 ~~the full membership of the board of adjustment, special exceptions, or grant variances to the~~
3 ~~terms of the regulations or controls, subject to appropriate conditions or safeguards being~~
4 ~~adopted by the board of county commissioners.~~

5 Section 19. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Except as otherwise provided by section 30 of this Act, the board shall provide for the
8 appointment of a board of adjustment, or for the planing and zoning commission to act as a
9 board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of
10 this chapter, shall provide that the board of adjustment may, in appropriate cases and subject to
11 appropriate conditions and safeguards, grant variances to the terms of the ordinance ~~with general~~
12 ~~or specific rules therein contained.~~

13 Section 20. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 A board of adjustment, other than the planing and zoning commission acting as a board of
16 adjustment, consists of five members, each to be appointed for a term of three years and
17 removable for cause by the appointing authority upon written charges and after public hearing.
18 Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The
19 appointing authority may also appoint a first alternate and a second alternate for a term of three
20 years each. If a member is unable to attend a meeting, the first alternate, or second alternate, in
21 turn, shall serve in the member's place.

22 Section 21. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Meetings of the board of adjustment are held at the call of the chair and at such other times
25 as the board of adjustment determines. The chair or, in the chair's absence, the acting chair may

1 administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment
2 are open to the public.

3 Section 22. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The board of adjustment shall keep minutes of its proceedings, showing the vote of each
6 member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep
7 records of its examinations and other official actions, all of which shall be immediately filed in
8 the office of the board of adjustment and are public records. However, the board of adjustment
9 may destroy any record that the records destruction board, acting pursuant to § 1-27-19,
10 declares to have no further administrative, legal, fiscal, research, or historic value.

11 Section 23. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 The board of adjustment may:

- 14 (1) Hear and decide appeals if it is alleged there is error in any order, requirement,
15 decision, or determination made by an administrative official in the enforcement of this
16 chapter or of any ordinance adopted pursuant to this chapter; and
- 17 (2) Authorize upon appeal in specific cases such variance from terms of the ordinance as
18 will not be contrary to the public interest, if, owing to special conditions, a literal
19 enforcement of the provisions of the ordinance will result in unnecessary hardship and
20 so that the spirit of the ordinance is observed and substantial justice done.

21 Section 24. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 The board of adjustment shall adopt rules in accordance with the provisions of any ordinance
24 adopted pursuant to this chapter.

25 Section 25. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Appeals to the board of adjustment may be taken by any person aggrieved or by any officer,
3 department, board, or bureau of the county affected by any decision of the administrative officer.
4 The appeal shall be taken within a reasonable time, as provided by the rules of the board of
5 adjustment, by filing with the officer from whom the appeal is taken and with the board of
6 adjustment a notice of appeal specifying the grounds of the appeal. The officer from whom the
7 appeal is taken shall transmit to the board of adjustment all the papers constituting the record
8 upon which the action appealed from was taken.

9 Section 26. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 An appeal to the board of adjustment stays all proceedings in the action appealed from,
12 unless the officer from whom the appeal is taken files a certificate that by reason of facts stated
13 in the certificate a stay would in the officer's opinion cause imminent peril to life or property. In
14 such case proceedings may not be stayed other than by a restraining order which may be granted
15 by the board of adjustment or by a court of record, on application, on notice to the officer from
16 whom the appeal is taken and on due cause shown.

17 Section 27. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 The board of adjustment shall hold at least one public hearing of the appeal. Notice of the
20 time and place shall be given at least ten days in advance by publication in a legal newspaper of
21 the county, and due notice shall be given to the parties in interest. The board of adjustment shall
22 decide the appeal within a reasonable time. Any party may appear at the hearing in person or by
23 agent or by attorney.

24 Section 28. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
25 follows:

1 In exercising the powers mentioned in section 23 of this Act, the board of adjustment may,
2 in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may
3 modify the order, requirement, decision, or determination appealed from and may make such
4 order, requirement, decision, or determination as ought to be made, and to that end has all the
5 powers of the officer from whom the appeal is taken.

6 Section 29. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The concurring vote of two-thirds of the members of the board of adjustment is necessary
9 to reverse any order, requirement, decision, or determination of any such administrative official,
10 or to decide in favor of the applicant on any matter upon which it is required to pass under any
11 such ordinance, or to effect any variation in the ordinance.

12 Section 30. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 In lieu of appointing the board of adjustment provided by section 19 of this Act, the board
15 of county commissioners having adopted and in effect a zoning ordinance may act as and
16 perform all the duties and exercise the powers of the board of adjustment. The chair of the board
17 of county commissioners is chair of the board of adjustment as so composed. The concurring
18 vote of at least two-thirds of the members of the board as so composed is necessary to reverse
19 any order, requirement, decision, or determination of any administrative official, or to decide in
20 favor of the appellant on any matter upon which it is required to pass under any zoning
21 ordinance, or to effect any variation in the ordinance.

22 Section 31. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Any person or persons, jointly or severally, aggrieved by any decision of the board of
25 adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, may

1 present to a court of record a petition duly verified, setting forth that the decision is illegal, in
2 whole or in part, specifying the grounds of the illegality. The petition shall be presented to the
3 court within thirty days after the filing of the decision in the office of the board of adjustment.

4 Section 32. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Upon the presentation of the petition, the court may allow a writ of certiorari directed to the
7 board of adjustment to review the decision of the board of adjustment and shall prescribe the
8 time within which a return must be made and served upon the relator's attorney, which may not
9 be less than ten days and may be extended by the court. The allowance of the writ does not stay
10 proceedings upon the decision appealed from, but the court may, on application, on notice to the
11 board of adjustment and on due cause shown, grant a restraining order.

12 Section 33. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 The board of adjustment is not required to return the original papers acted upon by it, but
15 it is sufficient to return certified copies of the papers, or of such portions of the papers as may
16 be called for by the writ. The return shall concisely set forth such other facts pertinent and
17 material to show the grounds of the decision appealed from and shall be verified.

18 Section 34. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 If upon the hearing it appears to the court that testimony is necessary for the proper
21 disposition of the matter, the court may take evidence, or appoint a referee to take such evidence
22 as it may direct and report the evidence to the court with the referee's findings of fact and
23 conclusions of law, which constitute a part of the proceedings upon which the determination of
24 the court is made.

25 Section 35. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The court may reverse or affirm, wholly or partly, or may modify the decision brought up for
3 review.

4 Costs are not allowed against the board of adjustment unless the court determines that the
5 board of adjustment acted with gross negligence, or in bad faith, or with malice in making the
6 decision appealed from.

7 Section 36. That § 11-2-26 be amended to read as follows:

8 11-2-26. ~~The~~ Any lawful use, lot, or occupancy of land or premises existing at the time of
9 the adoption of ~~an official control hereunder~~ the zoning ordinance may be continued, ~~although~~
10 ~~such even though the use, lot, or occupation does not conform to the provisions thereof, but if~~
11 ~~such of the ordinance. However, if the nonconforming use, lot, or occupancy is discontinued for~~
12 ~~a period of more than one year, any subsequent use, lot, or occupancy of the land or premises~~
13 ~~shall be in conformance with the official controls~~ conform with the zoning ordinance.

14 Section 37. That § 11-2-27 be amended to read as follows:

15 11-2-27. The board may by resolution as provided in § 11-2-25 prescribe such regulations
16 not contrary to law or § 11-2-26, as it deems desirable or necessary to regulate and control, or
17 reduce the number or extent of or bring about the gradual elimination of nonconforming uses ~~and~~
18 ~~, lots, or occupancies. Provided, however, that~~ However, in accordance with the provisions of
19 § 11-2-26, ~~the~~ any lawful use, lot, or occupancy of land or premises existing at the time of the
20 adoption of ~~an official control~~ the zoning ordinance may be continued, ~~although such use even~~
21 ~~though the use, lot, or occupancy does not conform to the provisions of such official control~~ the
22 zoning ordinance. ~~If such use~~ the use, lot, or occupancy is discontinued for more than one year,
23 the board may adopt, after notice by registered or certified mail to the property owners, an
24 amortization schedule to bring about the gradual elimination of ~~such~~ the nonconforming use, lot,
25 or occupancy.

Section 38. That § 11-2-28 be amended to read as follows:

11-2-28. ~~Regulations, restrictions, and boundaries, or enforcement provisions established in the comprehensive plan or adjuncts thereto adopted by the board of county commissioners~~ The plan, ordinances, restrictions, and boundaries adopted pursuant to this chapter may ~~from time to time~~ be amended, supplemented, changed, modified, or repealed by action of the board of county commissioners as outlined in this chapter. ~~Such.~~ Any such modification or repeal shall be proposed in a resolution or ordinance, as appropriate, presented to the board for adoption in the same manner and upon the same notice as required for the adoption of the original resolution or ordinance. The amendment, supplement, change, modification, or repeal may be requested through a petition by thirty percent of the landowners in the zoning district or districts requesting change.

Section 39. That § 11-2-28.1 be amended to read as follows:

11-2-28.1. An individual landowner may ~~also~~ petition the board to change the zoning of all or any part of the landowner's property. ~~Such~~ The petitioning landowner shall ~~also~~ notify all other abutting landowners by registered or certified mail of the petitioned zoning change at least seven days ~~prior to any~~ before the public hearing held ~~thereon~~ on the matter by the ~~board of county commissioners~~ planning commission. Property ~~shall be~~ is considered as abutting even though it may be separated from the property of the petitioner by a public road or highway.

Section 40. That § 11-2-29 be amended to read as follows:

11-2-29. ~~Upon such filing or upon separate request by the board, the~~ The planning commission shall hold at least one public hearing on any proposed change or modification to the plan or ordinances. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county. At ~~such~~ the public hearing, any person may appear and request or protest the requested change.

Section 41. That § 11-2-30 be amended to read as follows:

1 11-2-30. ~~The board of county commissioners shall thereafter~~ After the hearing, the board
2 shall by resolution or ordinance, as appropriate, either adopt or reject ~~such the~~ amendment,
3 supplement, change, modification, or repeal, ~~and if it is adopted by the board of county~~
4 ~~commissioners, a summary shall be prepared by the county planning commission, reviewed by~~
5 ~~the state's attorney, and published. If adopted, the board shall publish a notice of the fact of~~
6 adoption once in a legal newspaper of such county and take effect on the twentieth day after its
7 publication. The provisions of § 11-2-22 are applicable to this section.

8 Section 42. That § 11-2-31 be amended to read as follows:

9 11-2-31. The governing body of any municipality may request a county planning commission
10 to submit to ~~such the municipal~~ governing body a comprehensive plan for the municipality setting
11 forth such provisions as the county planning commission deems applicable to the municipality
12 for its best interests, or to prepare ~~official controls~~ zoning or subdivision ordinances to apply to
13 the area within the municipality. Notwithstanding the adoption of the comprehensive plan and
14 recommendations for the municipality, the plan and recommendations ~~shall not become~~ are not
15 binding until ~~official controls~~ zoning or subdivision ordinances are adopted by the municipality
16 in accordance with the plan.

17 Section 43. That § 11-2-36 be repealed.

18 ~~11-2-36. Any board of county commissioners may adopt zoning ordinances, resolutions or~~
19 ~~regulations designating or limiting the location, height, bulk, number of stories, size of, and the~~
20 ~~specific uses for which dwellings, buildings and structures may thereafter be erected or altered;~~
21 ~~the minimum and maximum size of yards, or other open spaces; sanitary, safety and protective~~
22 ~~measures that shall be required for such dwellings, buildings and structures; the area required to~~
23 ~~provide for off-street loading and parking facilities; flood plain areas; and to avoid too great a~~
24 ~~concentration or scattering of the population. All such provisions shall be uniform for each class~~
25 ~~of land or building throughout any district, but the provisions in one district may differ from~~

1 ~~those in other districts.~~

2 Section 44. That § 11-2-37 be amended to read as follows:

3 11-2-37. ~~Whenever~~ If an area within a county and not within a municipality ~~shall become~~
4 becomes so situated that a zoning ~~district becomes~~ ordinance is advisable, persons within the
5 area may apply to the board ~~of county commissioners~~ to establish the area as a special zoning
6 ~~district area~~ pursuant to this chapter. The board ~~of county commissioners shall~~ may not form
7 special zoning ~~districts~~ areas if a county wide comprehensive plan and zoning ordinances have
8 been adopted. The formation of a special zoning ~~district shall only be~~ area is only valid in a
9 county that has not adopted a county wide comprehensive plan and zoning ordinances.

10 Section 45. That § 11-2-38 be amended to read as follows:

11 11-2-38. Persons making application for the establishment of a special zoning ~~district area~~
12 shall first obtain an accurate survey and map of the territory intended to be embraced within the
13 limits of ~~such the~~ the special zoning ~~district area~~, showing the boundaries and area ~~thereof, and the~~
14 ~~accuracy thereof of the proposed special zoning area. The accuracy of the survey and map shall~~
15 be verified by the affidavit of the surveyor.

16 Section 46. That § 11-2-41 be amended to read as follows:

17 11-2-41. The application for establishment of a special zoning ~~district area~~ shall be a petition
18 verified by one or more applicants, by affidavit stating that the affiant or affiants personally
19 witnessed the signatures ~~thereon~~ on the petition and believe them to be genuine, and shall be
20 subscribed by not less than one-third of the whole number of qualified voters residing within ~~such~~
21 the territory according to the census taken. ~~It~~ The petition shall be filed with the county auditor
22 and presented to the board ~~of county commissioners~~ for consideration at its next meeting.

23 Section 47. That § 11-2-42 be amended to read as follows:

24 11-2-42. If the board ~~of county commissioners shall be~~ is satisfied that the requirements of
25 this chapter have been fully complied with, it shall make an order declaring that ~~such the~~ territory

1 shall, with the assent of the qualified voters thereof as provided in § 11-2-39, be a special zoning
2 ~~district area~~ or number specified in the application. ~~It shall also include in such~~ The board shall
3 include in the order a notice for an election of the qualified voters resident in the proposed
4 special zoning ~~district area~~, at a convenient place or places therein, on some day within one
5 month ~~therefrom from the notice~~, to determine whether ~~such the~~ territory shall become a special
6 zoning ~~district area~~.

7 Section 48. That § 11-2-43 be amended to read as follows:

8 11-2-43. The board shall give ten days' notice of ~~such the~~ election by publication and by
9 posting a copy of ~~such the~~ notice at three of the most public places in the proposed special
10 zoning ~~district area~~.

11 Section 49. That § 11-2-45 be amended to read as follows:

12 11-2-45. The board ~~of county commissioners~~ shall appoint three judges, who shall elect one
13 of their members as superintendent and who shall conduct the election. The ~~county~~
14 ~~commissioners board~~ shall provide the costs and supplies of the election.

15 Section 50. That § 11-2-46 be amended to read as follows:

16 11-2-46. The vote upon the question of establishing a special zoning ~~district area~~ shall be by
17 ballot in the form provided by § 9-13-22. If a majority of those voting vote in favor of the
18 establishment, ~~such the~~ territory ~~shall is~~ from that time ~~be deemed~~ a special zoning ~~district area~~
19 by the name and style specified in the order of the board ~~of county commissioners~~; otherwise,
20 no further proceedings ~~shall~~ may be taken thereon.

21 Section 51. That § 11-2-47 be amended to read as follows:

22 11-2-47. After the vote is cast and canvassed, ~~such the~~ judges shall make a verified statement
23 showing the whole number of ballots cast, together with the number voting for and the number
24 voting against establishment, and shall return the ~~same~~ statement to the board ~~of county~~
25 ~~commissioners~~ at its next session. If satisfied with the legality of ~~such the~~ election, the board of

1 ~~county commissioners~~ shall make an order declaring that ~~such zoning district~~ the special zoning
2 area has been incorporated by the name or number adopted. ~~Such order shall be~~ The order's
3 conclusive of the fact of ~~such~~ establishment.

4 Section 52. That § 11-2-48 be amended to read as follows:

5 11-2-48. The board ~~of county commissioners is authorized to~~ may expend funds of the
6 county, in the manner and to the extent permitted by law for other county expenditures, in the
7 payment of necessary costs of preparation of petitions, surveys, maps, and applications submitted
8 under the provisions of this chapter, and of the holding of elections on the establishment of
9 special zoning districts hereunder areas under the provisions of this chapter.

10 Section 53. That § 11-4-1 be amended to read as follows:

11 11-4-1. For the purpose of promoting health, safety, ~~morals~~, or the general welfare of the
12 community the governing body of any municipality ~~is hereby empowered to~~ may regulate and
13 restrict the height, number of stories, and size of buildings and other structures, the percentage
14 of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of
15 population, and the location and use of buildings, structures, and land for trade, industry,
16 residence, flood plain, or other purposes.

17 Section 54. That § 11-4-3.1 be amended to read as follows:

18 11-4-3.1. If a municipality is conducting or in good faith intends to conduct studies within
19 a reasonable time or has held or is holding a hearing for the purpose of considering a
20 comprehensive plan ~~or official controls~~, the city council in order to protect the public health,
21 safety, and general welfare may adopt as ~~an~~ emergency ~~measure~~ measures a temporary ~~zoning~~
22 ~~map, a temporary zoning ordinance and map, and other a temporary official controls subdivision~~
23 ordinance, the ~~purpose~~ purposes of which ~~shall be~~ are to classify and regulate uses and related
24 matters as constitutes the emergency. Before adoption or renewal of ~~such~~ the emergency
25 measure, the council shall hold at least one public hearing. Notice of the time and place of the

1 hearing shall be given once at least ten days in advance by publication in a legal newspaper of the
2 municipality. Any emergency ordinance is limited to one year from the date it becomes effective
3 and may be renewed for one year. In no case may ~~such~~ the ordinance be in effect for more than
4 two years.

5 Section 55. That § 11-4-4 be amended to read as follows:

6 11-4-4. The governing body may adopt ~~the necessary regulations for preparing a preliminary~~
7 ~~survey and plan designating the proposed restrictions and district boundaries. The proposed~~
8 ~~district and restrictions shall be definitely set forth in a proposed ordinance. The ordinance shall~~
9 ~~be adopted as other ordinances~~ a zoning ordinance. Before adoption or renewal of ~~such~~ the
10 ordinance, the council shall hold at least one public hearing. Notice of the time and place of the
11 hearing shall be given once at least ten days in advance by publication in a legal newspaper of the
12 municipality. Any interested person shall be given a full, fair, and complete opportunity to be
13 heard at the hearing, and the governing body may refuse or adopt the ordinance, with or without
14 amendment.

15 Section 56. That § 11-4-5 be amended to read as follows:

16 11-4-5. If ~~such an~~ a zoning ordinance is adopted, the ordinance is subject to the provisions
17 of § 9-19-7 as a comprehensive regulation unless the referendum is invoked, or unless a written
18 protest is filed with the auditor or clerk, signed by at least forty percent of the owners of equity
19 in the lots included in any proposed district and the lands within two hundred fifty feet from any
20 part of ~~such~~ the proposed district. A corporation ~~shall be~~ is construed to be a sole owner, and
21 if parcels of land are in the name of more than one person, ownership representation ~~shall be~~ is
22 in proportion to the number of signers who join in the petition in relation to the number of
23 owners. If a protest is filed, the ordinance does not become effective unless the ordinance is
24 approved by two-thirds of the governing body of the municipality. The protest provisions of this
25 section do not apply to any ordinance regulating or establishing flood plain areas.

Section 57. That § 11-4-8 be amended to read as follows:

11-4-8. Regulations, restrictions, and boundaries adopted pursuant to this chapter may be amended, supplemented, changed, modified, or repealed. Any such modification or repeal shall be proposed in an ordinance presented to the governing body for adoption in the same manner and upon the same notice as required for the adoption of the original ordinance. However, amendments or additions to a planning subdivision or zoning ordinance may be published without republishing the full ordinance if the section or subsection of the ordinance containing the change is published in its entirety.

Section 58. That § 11-4-9 be amended to read as follows:

11-4-9. The governing body may by ordinance require as a condition precedent to the introduction of any ordinance proposing changes in the zoning ordinance that there be first filed with the city auditor, finance officer, or clerk the written consent of the owners of not exceeding sixty percent of the aggregate area having the right of protest against such proposed ordinance if adopted, determined as provided by § 11-4-5.

Section 59. That § 11-4-12 be amended to read as follows:

11-4-12. The planning and zoning commission, when appointed, shall ~~make a preliminary report, and~~ hold public hearings, subject to the same notice requirements as provided in § 11-4-4, ~~thereon~~ before submitting its final report recommendation, and the governing body ~~shall~~ may not hold its public hearings or take action until it has received the final report recommendation of ~~such~~ the commission.

Section 60. That § 11-4-13 be amended to read as follows:

11-4-13. Except as otherwise provided by § 11-4-24, the governing body shall provide for the appointment of a board of adjustment, or for the planning and zoning commission to act as a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter, shall provide that the ~~said~~ board of adjustment may, in appropriate cases and

subject to appropriate conditions and safeguards, ~~make special exceptions or~~ grant variances to the terms of the ordinance ~~with general or specific rules therein contained.~~

Section 61. That § 11-4-14 be amended to read as follows:

11-4-14. A board of adjustment, other than the planning and zoning commission acting as a board of adjustment, ~~shall consist~~ consists of five members, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The appointing authority ~~shall~~ may also appoint a first alternate and a second alternate for a term of three years each. If a member is unable to attend a meeting, the first alternate, or second alternate, in turn, shall serve in ~~his~~ the member's place.

Section 62. That § 11-4-17 be amended to read as follows:

11-4-17. The board of adjustment ~~shall have the following powers~~ may:

(1) ~~To hear~~ Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant ~~thereto~~ to this chapter;

(2) ~~To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance;~~

~~(3) To authorize~~ Authorize upon appeal in specific cases such variance from terms of the ordinance ~~as will not be~~ contrary to the public interest, ~~where~~ if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance ~~shall be~~ is observed and substantial justice done.

Section 63. That § 11-6-1 be amended to read as follows:

11-6-1. Terms used in this chapter, ~~unless the context otherwise plainly requires,~~ shall mean:

- 1 (1) "Commission," "planning and zoning commission," or "planning commission," any city
2 planning and zoning commission created under the terms of this chapter;
- 3 (2) "Comprehensive plan," a any document which describes in words, and may illustrate
4 by maps, plats, charts, and other descriptive matter, the ~~policy, goals~~ goals, policies,
5 and objectives of the municipality to interrelate all functional and natural systems and
6 activities relating to the development of the territory under its jurisdiction;
- 7 (3) "Council," the chief legislative body or governing body of the municipality;
- 8 (4) "Mayor," the chief executive of the municipality, whether the official designation of
9 such official be mayor, city manager, or otherwise;
- 10 (5) ~~The term "municipal" or "municipalities," "city" or "cities," includes and relates to all~~
11 ~~incorporated cities and towns~~ "Municipality" or "city," any incorporated city or town;
- 12 (6) ~~"Official controls," any regulation, standard, map, or procedure adopted by the~~
13 ~~municipality to regulate the development of the territory so as to carry out the~~
14 ~~comprehensive plan;~~
- 15 (7) ~~The term "street" or "streets," relates to and includes all streets, avenues, boulevards,~~
16 ~~roads, lanes, alleys or other ways~~ "Street," any street, avenue, boulevard, road, lane,
17 alley, or other roadway;
- 18 (8) "Subdivision," the division of any tract or parcel of land into two or more lots, sites,
19 or other division for the purpose, whether immediate or future, of sale or building
20 development and includes resubdivision. This definition ~~shall~~ does not apply to the
21 conveyance of a portion of any previously platted tract, parcel, lot, or site; ~~provided,~~
22 ~~however, that such~~ if the conveyance does not cause the tract, parcel, lot, or site from
23 which the portion is severed to be in violation of any existing zoning ordinance or
24 subdivision regulation applying to such tract, parcel, lot, or site;
- 25 (9) "Subdivision ordinance," ~~the~~ any ordinance adopted by the municipality to regulate

the subdivision of land so as to provide: coordination of streets with other subdivisions and the major street plan, adequate areas set aside for public uses, water and sanitation facilities, drainage and flood control, and conformity with the comprehensive plan;

(9A) "Temporary zoning or subdivision ordinance," an ordinance adopted as an emergency measure for a limited duration;

(10) "Zoning map," ~~the~~ any map adopted as an ordinance by the municipality that delineates the extent of each district or zone established in the zoning ordinance;

(11) "Zoning ordinance," ~~the~~ any ordinance adopted by the municipality to ~~regulate by districts or zones the location, height, bulk and size of buildings and other structures and accessory uses, percentage of lot which may be occupied, the size of lots, courts, and other open spaces, the density and distribution of population, the location and use of buildings, and structures for trade, advertising uses, industry, residence, recreation, public activities, or other purposes, and, the uses of land for trade, industry, recreation, or other purposes~~ implement the comprehensive plan by regulating the location and use of buildings and uses of land.

Section 64. That § 11-6-4.1 be amended to read as follows:

11-6-4.1. For the purpose of carrying out any of the provisions of §§ 11-6-26 to 11-6-38, inclusive, the city council may temporarily add as a member of the city planning and zoning commission a resident of the area to be affected by proposed ~~official~~ municipal ~~controls~~ zoning and subdivision ordinances outside the corporate limits of the municipality.

Section 65. That § 11-6-26 be amended to read as follows:

11-6-26. ~~From and after the time when~~ After the city council of any municipality ~~shall have~~ has adopted a comprehensive plan ~~which that~~ includes at least a major street plan or ~~shall have~~ has progressed in its comprehensive planning to the stage of making and ~~adoption of~~ adopting

1 a major street plan, and ~~shall have~~ has filed a certified copy of ~~such the~~ major street plan in the
2 office of the register of deeds of the county in which the municipality is located, no plat of a
3 subdivision of land lying within the municipality, or of land within three miles of its corporate
4 limits and not located in any other municipality, ~~shall~~ may be filed or recorded ~~until it shall have~~
5 ~~been submitted to and a report and recommendations thereon made by the planning and zoning~~
6 ~~commission to the city council and the council has approved the plat~~ unless the plat has the
7 recommendation of the city planning and zoning commission and the approval of the city council.
8 As an alternative, the plat may be reviewed and approved in accordance with § 11-3-6. This
9 provision ~~shall be applicable~~ applies to land within three miles of the corporate limits of the
10 municipality and not located in any other municipality only if the comprehensive plan or major
11 street plan includes such land. However, ~~in the case of~~ if such extra municipal land ~~lying~~ lies
12 within three miles of more than one first or second class municipality, the jurisdiction of each
13 municipality ~~shall terminate~~ terminates at a boundary line equidistant from the respective
14 corporate limits of ~~such the~~ municipalities, unless otherwise agreed to by a majority vote of the
15 governing body of each such municipality. ~~Such~~ The plats shall, after report and
16 recommendations of the commission are made and filed, be approved or disapproved by the city
17 council or reviewed and approved in accordance with § 11-3-6. The commission shall make its
18 recommendation to the council within sixty days of submission.

19 Section 66. That § 11-6-26.1 be amended to read as follows:

20 11-6-26.1. In the case of land over which there is joint municipal-county zoning jurisdiction,
21 ~~such plats shall~~ the plats may not be filed or recorded until ~~also having~~ the plats have also been
22 submitted to the county planning and zoning commission for review and recommendation to the
23 city council. The county planning and zoning commission shall make its recommendation to the
24 city council within forty-five days of submission. If the county planning and zoning commission
25 recommends disapproval of any such plats, a two-thirds vote of the entire membership of the city

1 council ~~shall be~~ is required to approve ~~any such plats~~ the plats. The board of county
2 commissioners may by resolution designate an administrative official of the county to review and
3 make a recommendation to the city council in lieu of the review and recommendation by the
4 county planning commission.

5 Section 67. That § 11-6-39 be amended to read as follows:

6 11-6-39. ~~The city council may prescribe such regulations not contrary to law as it deems~~
7 ~~necessary to regulate and control nonconforming uses existing at the time of adoption of an~~
8 ~~official control hereunder or under chapter 11-4, and to reduce the number or extent of~~
9 ~~nonconforming uses and occupancies. Provided however, that the~~ The lawful use of land or
10 premises existing at the time of the adoption of ~~an official control~~ the zoning ordinance may be
11 continued, ~~although such use~~ even though the use, lot, or occupancy does not conform to the
12 provisions of ~~such official control~~ the zoning ordinance. If ~~such~~ the nonconforming use is
13 discontinued for a period of more than one year, ~~the city council may adopt, after notice by~~
14 ~~registered or certified mail to the property owners, an amortization schedule to bring about the~~
15 ~~gradual elimination of such nonconforming use~~ any subsequent use, lot, or occupancy of the land
16 or premises shall be in conformance with such regulation.

1 **BILL HISTORY**

2 1/18/00 First read in House and referred to committee assignment waived. H.J. 113

3 1/19/00 Referred to Local Government.

4 1/23/00 Scheduled for Committee hearing on this date.

5 1/25/00 Scheduled for Committee hearing on this date.

6 1/27/00 Scheduled for Committee hearing on this date.

7 1/27/00 Local Government Do Pass, Passed, AYES 13, NAYS 0. H.J. 265

8 1/28/00 House of Representatives Deferred to another day. H.J. 288

9 1/31/00 House of Representatives Deferred to another day. H.J. 318

10 2/1/00 House of Representatives Deferred to another day. H.J. 345

11 2/2/00 Motion to Amend, Passed. H.J. 369

12 2/2/00 House of Representatives Do Pass Amended, Passed, AYES 47, NAYS 21. H.J. 369

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

592D0397

HOUSE ENGROSSED NO. **HB1167** - 1/31/00

Introduced by: Representative Napoli and Senator Olson

1 FOR AN ACT ENTITLED, An Act to create a rebuttable presumption that the removal of
2 certain property from the state without payment constitutes theft.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 22-30A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 If any person transfers property purchased at a public auction beyond the borders of this state
7 without first either making full payment for the property or obtaining the written consent of the
8 auctioneer to transfer the property out of state, a rebuttable presumption arises that the transfer
9 was made with intent to defraud within the meaning of §§ 22-30A-1 and 22-30A-10 and that the
10 person who is the purchaser and transferrer has committed theft.

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 135

3 1/20/00 Referred to Judiciary.

4 1/26/00 Scheduled for Committee hearing on this date.

5 1/26/00 Judiciary Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 252

6 1/28/00 House of Representatives Do Pass Amended, Passed, AYES 56, NAYS 4. H.J. 291

7 1/28/00 House of Representatives Title Amended Passed. H.J. 292

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

571D0648

HOUSE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1175** - 2/3/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Representatives Hunt and Fiegen and Senator Moore

1 FOR AN ACT ENTITLED, An Act to authorize the Division of Insurance to promulgate rules
2 regarding the privacy of medical records.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The director of insurance shall promulgate rules pursuant to chapter 1-26, to
5 protect the privacy of personally identifiable health care and medical information, data, and
6 records. The rules shall cover health care and medical information, data, and records collected,
7 used, or disclosed by any person licensed or registered under Title 58 or any person with whom
8 such licensees or registrants contract, and shall include all health care and medical information,
9 data, and records received by or in the possession of the Division of Insurance. The rules may
10 include the following:

- 11 (1) Definition of terms;
- 12 (2) Standards for the protection of the privacy and confidentiality of personally
13 identifiable health care information and medical records;
- 14 (3) Rules for the collection, use, storage, security, disclosure, release, and disposal of
15 health care and medical information, data, and records in all forms, including printed
16 material, plastic media, audio, video, computerized and electronic transmissions;

- 1 (4) Rules regarding the sale and exchange of health care and medical information, data,
2 and records;
- 3 (5) Rules to define the responsibilities and limitations of those needing or requiring access
4 to health care and medical information, data, and records;
- 5 (6) Rules for procedures and documents required for the release or transfer of health care
6 and medical information, data, and records, including the identity of who may release
7 such information and records and under what conditions and provisions of the law,
8 as needed to protect the privacy of personally identifiable health care and medical
9 information, data, and records;
- 10 (7) Rules for the collection, use, storage, security, disclosure, distribution, release, and
11 disposal of health care information and medical records obtained, used, or held in
12 connection with the operation, maintenance, or review of insurance certificates,
13 contracts, policies, and plans, and health maintenance organizations, subject to the
14 jurisdiction of the director of insurance.

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 137

3 1/20/00 Referred to State Affairs. H.J. 160

4 1/24/00 Scheduled for Committee hearing on this date.

5 1/24/00 State Affairs Deferred to another day.

6 1/31/00 Scheduled for Committee hearing on this date.

7 2/2/00 State Affairs Hog Housed.

8 2/2/00 Scheduled for Committee hearing on this date.

9 2/2/00 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 4. H.J. 363

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

456D0556

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1191** - 2/9/00

Introduced by: Representatives Earley, Heineman, and Peterson and Senator Hainje

1 FOR AN ACT ENTITLED, An Act to revise the number of temporary on-sale licenses that may
2 be issued by municipalities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 35-4-14.2 be amended to read as follows:

5 35-4-14.2. ~~There may be issued in any~~ Any municipality ~~one~~ may issue an on-sale license to
6 be operated at a convention hall established pursuant to chapter 9-52 or 9-53. Such license shall
7 be issued without regard to the population limitations established pursuant to § 35-4-11. In
8 addition, any municipality with a population exceeding one hundred thousand may issue an on-
9 sale license to be operated at a sporting event held at a publicly owned sports arena or facility
10 that seats a minimum of one thousand persons. Any license issued pursuant to this section shall
11 be issued for a period not to exceed five consecutive days and ~~such~~ the license shall expire at
12 twelve o'clock midnight on the fifth day after issuance. No license may be issued, pursuant to the
13 provisions of this section, in a municipality which operates a license pursuant to § 35-4-14.1. No
14 public hearing is required for the issuance of a license pursuant to this section if the individual
15 applying for ~~such~~ the license holds an on-sale alcoholic beverage license in ~~such~~ the municipality
16 or holds an operating agreement for a municipal on-sale alcoholic beverage license. No person

- 1 who holds an operating agreement for a municipal license pursuant to § 35-4-14.1 may receive
- 2 a license pursuant to this section.

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 140

3 1/20/00 Referred to Local Government.

4 2/3/00 Scheduled for Committee hearing on this date.

5 2/3/00 Deferred to 36th legislative day, AYES 8, NAYS 4. H.J. 406

6 2/8/00 Local Government Reconsidered, AYES 11, NAYS 0.

7 2/8/00 Local Government Do Pass Amended, Passed, AYES 11, NAYS 0. H.J. 503

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

349D0613

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB1194** - 2/3/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Representatives Wilson, Cutler, Duniphan, and Fischer-Clemens and Senators Daugaard and Flowers

1 FOR AN ACT ENTITLED, An Act to provide for the issuance of a protection order in the case
2 of certain crimes of violence or assaults.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Any person who has suffered physical injury as a result of an assault or a crime
5 of violence as defined in subdivision 22-1-2(9) may petition the court for a protection order. The
6 petition shall be accompanied by an affidavit made under oath stating the specific facts and
7 circumstances of the injury and the acts which caused the injury. The petition shall be governed
8 by the procedures and penalties described in §§ 22-19A-9 to 22-19A-16, inclusive.

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 140

3 1/20/00 Referred to Judiciary.

4 1/28/00 Scheduled for Committee hearing on this date.

5 1/31/00 Scheduled for Committee hearing on this date.

6 2/2/00 Judiciary Hog Housed.

7 2/2/00 Scheduled for Committee hearing on this date.

8 2/2/00 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 362

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

951D0690

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1293** - 2/2/00

Introduced by: Representatives Derby, Duniphan, Fiegen, and Peterson and Senator Hainje

1 FOR AN ACT ENTITLED, An Act to revise the procedure to determine if real estate taxes have
2 been paid before the date due.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-21-23 be amended to read as follows:

5 10-21-23. On the first day of May of the year after which taxes have been assessed, one-half
6 of all unpaid real estate taxes are delinquent. However, all real estate taxes totaling fifty dollars
7 or less shall be paid in full on or before April thirtieth. On the first day of each month thereafter
8 there shall be added as interest on the delinquent taxes at the Category B rate of interest as
9 established in § 54-3-16. If the other half is not paid on or before the thirty-first day of October
10 of the same year, that also becomes delinquent on November first and the same interest shall
11 attach in the same manner. If the last day of the month falls on a Saturday or Sunday, the tax is
12 due and payable on the last working day. The tax payment shall either be received in the office
13 on the last working day or the tax payment shall be postmarked by the last day of the month that
14 the taxes are due.

1 **BILL HISTORY**

2 1/24/00 First read in House and referred to committee assignment waived. H.J. 201

3 1/25/00 Referred to Local Government.

4 2/1/00 Scheduled for Committee hearing on this date.

5 2/1/00 Local Government Do Pass Amended, Passed, AYES 10, NAYS 3. H.J. 337

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

464D0746

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB1306** - 2/8/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Representatives Duenwald and Brown (Jarvis) and Senator Drake

1 FOR AN ACT ENTITLED, An Act to prospectively apply the annual increase in workers'
2 compensation benefits to certain disabilities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The annual increase in benefit allowance provided by § 62-4-7 also applies to any
5 total disability occurring before July 1, 1989. The annual increase in benefit allowance for such
6 a total disability applies prospectively from July 1, 2000.

1 **BILL HISTORY**

2 1/24/00 First read in House and referred to committee assignment waived. H.J. 203

3 1/25/00 Referred to Judiciary.

4 2/4/00 Scheduled for Committee hearing on this date.

5 2/4/00 Judiciary Do Pass Amended, Failed, AYES 5, NAYS 6.

6 2/4/00 Deferred by Chair.

7 2/4/00 Deferred by Chair.

8 2/7/00 Judiciary Hog Housed.

9 2/7/00 Scheduled for Committee hearing on this date.

10 2/7/00 Judiciary Do Pass Amended, Passed, AYES 9, NAYS 2. H.J. 447

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

184D0151

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **SB85** - 2/10/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Senators Brown (Arnold), Albers, Brosz, Daugaard, Drake, Dunn (Rebecca), Duxbury, Flowers, Halverson, Ham, Kloucek, Lange, Lawler, Olson, Reedy, Shoener, and Symens and Representatives Fiegen, Brown (Jarvis), Brown (Richard), Crisp, Diedrich (Larry), Engbrecht, Fischer-Clemens, Fitzgerald, Klaudt, Kooistra, McCoy, Napoli, Pummel, Smidt, and Wetz

1 FOR AN ACT ENTITLED, An Act to revise certain powers of the South Dakota Building
2 Authority, to provide for the establishment of a corporation by the authority, to provide for
3 the transfer and sale of all future right, title, and interest of certain amounts payable to the
4 state by various tobacco companies under a master settlement agreement, and to declare an
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

7 Section 1. Terms used in this Act mean:

- 8 (1) "Authority," the South Dakota Building Authority, a body corporate and politic,
9 organized and existing under chapter 5-12;
- 10 (2) "Bonds," bonds, bond anticipation notes, notes, certificates of ownership or
11 indebtedness, or other obligations issued, incurred, or otherwise created pursuant to
12 this Act and payable directly or indirectly out of or representing an interest in tobacco
13 settlement revenues or other rights under or with respect to the master settlement
14 agreement;

- 1 (3) "Corporation," the special purpose body corporate and politic established by the
2 authority by resolution as provided in section 3 of this Act;
- 3 (4) "Master settlement agreement," the master settlement agreement entered into on
4 November 23, 1998, by attorneys general from the several states, including the State
5 of South Dakota, and various tobacco companies, as amended on January 1, 2000;
- 6 (5) "Master settlement escrow agent," the escrow agent under the master settlement
7 agreement;
- 8 (6) "Net proceeds of bonds," the proceeds of bonds issued by the corporation under this
9 Act less any amounts applied or to be applied to pay transaction and administrative
10 expenses and to fund any reserves deemed necessary or appropriate by the
11 corporation;
- 12 (7) "Net proceeds of sale of tobacco settlement revenues," the funds and other
13 consideration received by the State of South Dakota from any sale, conveyance, or
14 other transfer pursuant to section 2 of this Act less any amounts applied or to be
15 applied to pay transaction and administrative expenses and to fund any reserves;
- 16 (8) "Permitted investments," any investment authorized by §§ 4-5-23 and 4-5-26 and
17 noncollateralized direct obligations of any bank or savings institution, insurance
18 company, or bank or insurance holding company if such institution or holding
19 company is rated in the highest two quality categories by a nationally recognized
20 rating agency;
- 21 (9) "Tobacco settlement revenues," any amount now or hereafter payable to the State of
22 South Dakota under or in connection with the Master Settlement Agreement;
- 23 (10) "Tobacco settlement trust fund," the State of South Dakota tobacco settlement trust
24 fund created pursuant to section 21 of this Act;
- 25 (11) "Tobacco settlement interest fund," the fund created by section 22 of this Act.

1 Section 2. All or any portion of the right, title, and interest of the State of South Dakota in,
2 to and under the master settlement agreement, to receive or collect tobacco settlement revenues,
3 may be sold, conveyed, or otherwise transferred by the state to the authority or to a corporation
4 established by the authority pursuant to this Act so long as the net proceeds of sale of tobacco
5 settlement revenues are:

- 6 (1) Deposited to the tobacco settlement trust fund;
- 7 (2) Deposited with or for the benefit of the authority for the purpose of paying all or any
8 part of the cost of one or a combination of projects permitted under chapter 5-12; or
- 9 (3) Paid to or for the benefit of the tobacco settlement trust and its assets.

10 No project may be undertaken by the authority with funds deposited pursuant to subdivision
11 (2) of this section unless the project has been approved by the Legislature. If any proceeds of the
12 sale are deposited with or for the benefit of the South Dakota Building Authority, then the South
13 Dakota Building Authority shall submit a written report to the Legislature advising the
14 Legislature of the deposit. Any sale, conveyance, or other transfer of tobacco settlement
15 revenues shall be evidenced by an instrument or agreement in writing signed on behalf of the
16 state by the Governor. The Governor shall file a certified copy of any instrument or agreement,
17 together with a report indicating the application of the net proceeds of the sale of tobacco
18 settlement proceeds with the Legislature. Each instrument or agreement may include an
19 irrevocable direction to the master settlement escrow agent to pay all or a specified portion of
20 amounts due to the State of South Dakota under or in connection with the master settlement
21 agreement, including, without limitation, the tobacco settlement revenues, as have been sold,
22 conveyed, or otherwise transferred directly to or upon the order of the authority or corporation
23 or any trustee under an indenture or other agreement securing any bonds of the corporation or
24 the authority issued, incurred, or created for the purpose of raising funds to pay the purchase
25 price to the state. Upon the filing, the sale, conveyance, or other transfer is a true sale and

1 absolute conveyance of all right, title, and interest therein described in accordance with the terms
2 thereof, valid, binding, and enforceable in accordance with the terms thereof and the instrument
3 or agreements and any related instrument, agreement, or other arrangement, including any
4 pledge, grant of security interest, or other encumbrance made by the corporation or the authority
5 to secure any bonds issued, incurred, or created by the corporation or the authority, are not
6 subject to disavowal, disaffirmance, cancellation, or avoidance by reason of insolvency of any
7 party, lack of consideration or any other fact, occurrence, or rule of law.

8 Section 3. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 The authority shall establish by resolution a special purpose corporation which shall be body
11 corporate and politic and instrumentality of, but separate and apart from, the State of South
12 Dakota and the authority. The corporation shall be established for the express limited public
13 purposes set forth in this Act and no part of the net earnings of the corporation may inure to any
14 private individual.

15 Section 4. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 The corporation shall be governed by a board of directors consisting of the members of the
18 authority and two additional directors appointed by the Governor, which directors shall be
19 independent from the state. The resolution establishing the corporation shall serve as the charter
20 of the corporation and may be amended from time to time by the authority, but the resolution
21 shall provide that the power and the authority of the corporation is subject to the terms,
22 conditions, and limitations of this Act and any applicable covenants or agreements of the
23 corporation in any indenture or other agreement relating to any then outstanding bonds. The
24 corporation may enter into contracts regarding any matter connected with any corporate purpose
25 within the objects and purposes of this Act.

1 Section 5. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 The authority and corporation may delegate by resolution to one or more officers or
4 employees of the authority or corporation any powers and duties as it may deem proper.

5 Section 6. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The corporation may pledge as security for any bonds the rights under the master settlement
8 agreement held by the corporation, including the rights to receive or collect tobacco settlement
9 revenues, the proceeds thereof, or moneys or other funds deposited with or held by the
10 corporation. Any pledge made by the corporation is valid and binding from the time the pledge
11 is made. The property, revenues, moneys, and other funds so pledged and thereafter held or
12 received by the corporation shall immediately be subject to the lien of such pledge without any
13 physical delivery thereof or further act and subject only to the provisions of prior agreements.
14 The lien of such pledge shall be valid and binding as against all parties having claims of any kind
15 in tort, contract, or otherwise against the corporation irrespective of whether the parties have
16 notice thereof. No ordinance, resolution, trust agreement, or other instrument by which the
17 pledge is created need be filed or recorded except in the records of the corporation.

18 Section 7. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 In connection with the issuance of bonds, the corporation may enter into arrangements to
21 provide additional security and liquidity for the bonds. The arrangements may include, without
22 limitation, bond insurance, letters of credit, and lines of credit by which the corporation may
23 borrow funds to pay or redeem its bonds and purchase or remarketing arrangements for assuring
24 the ability of owners of the bonds to sell or have redeemed their bonds. The corporation may
25 enter into contracts and may agree to pay fees to persons providing the arrangements, including

1 from bond proceeds.

2 Section 8. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The resolution authorizing the issuance of its bonds or the indenture or other agreement
5 approved by the resolution may provide that interest rates may vary from time to time depending
6 upon criteria established by the corporation, which may include, without limitation, a variation
7 in interest rates as may be necessary to cause the bonds to be remarketable from time to time at
8 a price equal to their principal amount, and may provide for appointment of a national banking
9 association, bank, trust company, investment banker, or other financial institution to serve as a
10 remarketing agent in that connection. The indenture or other agreement with respect to the
11 bonds may provide that alternative interest rates or provisions do apply during such times as the
12 bonds are held by a person providing a letter of credit or other credit enhancement arrangement
13 for the bonds.

14 Section 9. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 In connection with the bonds under this Act, the corporation may enter into contracts that
17 it determines necessary or appropriate to permit it to manage payment or interest rate risk. These
18 contracts may include interest rate exchange agreements, contracts providing for payment or
19 receipt of funds based on levels of or changes in interest rates, contracts to exchange cash flows
20 or series of payments, and contracts incorporating interest rate caps, collars, floors, or locks.

21 Section 10. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 The corporation may not file a voluntary petition under or be or become a debtor or bankrupt
24 under the federal bankruptcy code or any other federal or state bankruptcy, insolvency, or
25 moratorium law or statute. Nor may any public officer, organization, entity or other person

1 authorize the corporation to be or become a debtor or bankrupt under the federal bankruptcy
2 code or any other federal or state bankruptcy, insolvency, or moratorium law or statute.

3 Section 11. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The corporation may not guarantee the debts of another. No indebtedness, bonds or
6 obligation, issued, incurred, or created by the State of South Dakota or any state agency or
7 instrumentality may be or become a lien, charge, or liability against the corporation or the
8 property or funds of the corporation except for debts incurred directly by the corporation.

9 Section 12. That chapter 5-12 be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The purposes of the corporation established by the authority pursuant to this Act are to:

- 12 (1) Purchase, acquire, own, pledge, encumber, or otherwise transfer all right, title, and
13 interest of the state in, to, and under the master settlement agreement, including all
14 right, title, and interest to receive or collect tobacco settlement revenues;
- 15 (2) Raise funds through the issuance of bonds or other obligations or evidences of
16 indebtedness or ownership or through the sale, transfer, pledge, encumbrance,
17 securitization, factoring, or other conveyance of the rights described above in
18 subdivision (1) of this section for the purposes described in this Act;
- 19 (3) Serve the Legislature by making reports concerning the foregoing;
- 20 (4) Sue and be sued and to prosecute and defend, at law or in equity, in any court having
21 jurisdiction of the subject matter and of the parties;
- 22 (5) Have and to use a corporate seal and to alter the same at pleasure;
- 23 (6) Maintain an office at any place the authority by resolution may designate; and
- 24 (7) Do all things necessary and convenient to carry out the purposes of this Act.

25 Section 13. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The corporation is vested with the same power and authority and is subject to the same
3 limitations and conditions, as are applicable to the authority pursuant to §§ 5-12-1.1, 5-12-4, 5-
4 12-5, 5-12-8.1, 5-12-22, 5-12-24, 5-12-26, 5-12-27, 5-12-27.1, 5-12-27.2, 5-12-27.3, 5-12-
5 27.4, 5-12-27.6, 5-12-28, 5-12-38, 5-12-38.1, and 5-12-40, except such power and authority
6 shall be exercised with respect to and shall be limited to the purposes of the corporation set forth
7 in section 12 of this Act. The corporation may not engage in any unrelated activities.

8 Section 14. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 No bond of the corporation issued, incurred, or created under this Act may be or become a
11 lien, charge, or liability against the State of South Dakota or the authority, nor against the
12 property or funds of the State of South Dakota or the authority within the meaning of the
13 Constitution or statutes of South Dakota.

14 Section 15. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 The State of South Dakota pledges to and agrees with the holders of the bonds, notes,
17 certificates, or other obligations issued, incurred, or created by the corporation under this Act
18 that the state will not limit or alter the rights and powers vested in the corporation by this Act
19 so as to impair the terms of any contract made by the corporation with those holders or in any
20 way impair the rights and remedies of those holders until the bonds, notes, certificates, or other
21 obligations, together with interest thereon, interest on any unpaid installments of interest, and
22 all costs and expenses in connection with any action or proceedings by or on behalf of those
23 holders are fully met and discharged. In addition, the state pledges to and agrees with the holders
24 of the bonds, notes, certificates, or other obligations issued, incurred, or created by the
25 corporation under this Act that the state will not limit or alter the basis on which tobacco

1 settlement revenues are to be paid to the corporation or the authority so as to impair the terms
2 of any such contract. The corporation is authorized to include these pledges and agreements of
3 the state in any contract with the holders of bonds, notes, certificates, or other obligations issued,
4 incurred, or created by the corporation under this Act.

5 Section 16. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Neither the State of South Dakota nor the authority is liable on bonds, notes, certificates, or
8 other obligations issued, incurred, or created by the corporation under this Act. Such bonds,
9 notes, certificates, or other obligations are not a debt of the state or the authority, and this Act
10 may not be construed as a guarantee by the state or the authority of the debts of the corporation.
11 The bonds, notes, certificates, or other securities shall contain a statement to this effect on the
12 face of the bonds, notes, certificates, or other obligations.

13 Section 17. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The authority is not liable for any bond, note, certificate, or other obligation issued, incurred,
16 or created by the corporation under this Act or for any act or failure to act of the corporation
17 and the corporation is not liable for any obligation of the authority or for any act or failure to act
18 by the authority.

19 Section 18. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The corporation is hereby declared to be performing a public function on behalf of the state
22 and to be a public instrumentality of the state. Accordingly, the income of the authority, and all
23 properties at any time owned by the authority, are exempt from all taxation in the State of South
24 Dakota.

25 Section 19. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 For purposes of chapter 47-31A, any bonds, notes, certificates, or other obligations issued,
3 incurred, or created by the corporation under this Act are deemed to be securities issued by a
4 public instrumentality of the State of South Dakota.

5 Section 20. That chapter 5-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The corporation may employ attorneys, accountants, tobacco industry consultants and
8 financial experts, managers, and such other employees and agents as may be necessary and fix
9 their compensation.

10 Section 21. The tobacco settlement trust fund is hereby established in the state treasury. The
11 net proceeds of sale of tobacco revenues less any amounts deposited with or for the benefit of
12 the authority pursuant to the provisions of section 2 of this Act, shall be deposited in the
13 tobacco settlement trust fund. In addition, any residual interest in or to tobacco settlement
14 revenues or other rights under the master settlement agreement, to the extent not required to
15 make payments with respect to any bonds of the corporation, are payable to or for the benefit
16 of the tobacco settlement trust fund. The principal of the tobacco settlement trust fund may not
17 be expended except for costs and expenses incurred in investing or otherwise administering the
18 tobacco settlement trust and its assets. The amounts in the tobacco settlement trust fund shall
19 be invested pursuant to §§ 4-5-23 and 4-5-26. An amount equal to the interest or other
20 investment income earned on money in the trust fund each fiscal year shall be transferred to the
21 tobacco settlement interest fund created in section 22 of this Act.

22 Section 22. The tobacco settlement interest fund is established in the state treasury. The
23 money in the tobacco settlement interest fund shall remain in the fund until appropriated by the
24 Legislature. The amounts in the tobacco settlement interest fund shall be invested pursuant to
25 §§ 4-5-23 and 4-5-26.

1 Section 23. Whereas, this Act is necessary for the support of the state government and its
2 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
3 force and effect from and after its passage and approval.

1 **BILL HISTORY**

2 1/18/00 First read in Senate and referred to Education. S.J. 71

3 1/25/00 Scheduled for Committee hearing on this date.

4 1/25/00 Education Do Pass, Passed, AYES 7, NAYS 0. S.J. 181

5 1/26/00 Referred to State Affairs, AYES 22, NAYS 12. S.J. 208

6 2/6/00 Scheduled for Committee hearing on this date.

7 2/7/00 Scheduled for Committee hearing on this date.

8 2/7/00 Deferred by Chair.

9 2/9/00 State Affairs Hog Housed.

10 2/9/00 Scheduled for Committee hearing on this date.

11 2/9/00 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 372